

***Case No COMP/M.2683 -
AKER MARITIME /
KVAERNER (II)***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 23/01/2002

*Also available in the CELEX database
Document No 302M2683*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23/01/2002

SG (2001) D/228154

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.2683 – Aker Maritime /Kvaerner (II)
Notification of 14.12.2001 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 14 December 2001 the Commission received a notification of a proposed concentration by which the undertaking Aker Maritime ASA (AMA, Norway) acquires sole control of Kvaerner (Norway) by way of purchase of shares.
2. On 14 December 2001, the Norwegian Government requested, pursuant to Article 6 of Protocol 24 of the EEA Agreement and Article 9 of the Merger Regulation that the case, insofar as it relates to the parties' oil and gas activities should be referred to the competent Norwegian Competition Authority. The request is subject to a separate decision by the Commission. The request does not concern the parties ship building activities, which are assessed in the current decision.

I. THE PARTIES

3. AMA, which is controlled by Aker RGI Holding ASA, is a provider of products and services for offshore exploration, development and production of oil and gas and is also active in shipbuilding.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

4. Kvaerner is an Anglo-Norwegian engineering and construction group, with significant activities in the same areas as AMA. In addition, its activities encompass other engineering & construction activities, as well as services to the pulping industry. In these latter areas there is, however, no overlap with any activity of Aker RGI Holding ASA.

II. THE OPERATION

5. Kvaerner has suffered a financial crisis in the second half of 2001. Against this background the boards of AMA and Kvaerner have entered into a Rescue Agreement regarding a comprehensive industrial and financial solution for Kvaerner. As a result of the agreement, AMA will acquire sole control over Kvaerner, and subsequently merge the oil and gas businesses of the two companies.

III. CONCENTRATION

6. The proposed concentration is an acquisition of sole control for the purposes of article 3(1)(b) of the Merger Regulation, whereby Aker Maritime acquires sole control of Kvaerner by way of purchase of shares.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². Each of them have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. The operation constitutes a co-operation case with the EFTA Surveillance Authority under Article 57 of the EEA Agreement in conjunction with Article 2(1)(c) of Protocol 24 to that Agreement.

V. RELEVANT MARKETS

Product Markets

8. AMA and Kvaerner are active in design and development and production of ships for commercial use. However, Kvaerner announced in 1999 its strategy to exit shipbuilding and this disposal program has resulted in the disposal of most of Kvaerner's yards. Consequently, Kvaerner's presence in shipbuilding has rapidly diminished and the activities of the parties in this area only overlap to a very limited extent.
9. In its previous case Comp/M.2117 - Aker/Kvaerner (I) decision, the Commission left open whether the relevant product market should be defined as the overall market for commercial shipbuilding or whether it should be further segmented into the commercial ships by type, as the concentration, even on the narrowest possible market definition does not raise any competition concerns within the shipbuilding sector. The

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

market conditions have not changed significantly since the time of that decision and the same conclusion can therefore be applied.

Geographic markets

10. AMA maintains that the market for commercial shipbuilding is global due to the fact that the parties face competition from several shipyards around the world, in particular from yards in South Korea, China and Singapore.
11. During the Commission's previous investigation this conclusion was supported by third parties. It was, however, found that, even on a narrower geographic market, the operation would not give rise to competition concerns and the geographic market definition could be left open. Again, the market conditions have not changed significantly since the time of that decision and the same conclusion can therefore be applied.

VI. COMPETITIVE ASSESSMENT

12. In the Commission's previous decision, the Commission concluded that the concentration would not cause any competition concerns in the shipbuilding industry.
13. According to current notification the commercial shipbuilding industry is global and the supply structure is quite fragmented, with the three largest suppliers (Hyundai, Samsung and Mitsubishi) having market shares between 7-12%. On a widely defined market, as commercial shipbuilding, the combined market share of AMA and Kvaerner would be around 7.3% for the deliveries 1998-2002. If a narrower product market were to be considered, i.e. commercial ships by type, the parties' combined market share would only exceed 15% for cruise ships, where they would have approximately 19% for deliveries in 1998-2000. While there is no detailed information available with regard to market shares based on sales to European based customers, there are no indications that the parties' market position would be significantly different as regards such customers.
14. On this basis, there is no reason to question the view of the parties that there have not been any major changes in the market or in the parties' situation that would change the previous conclusion of the Commission.

VII. CONCLUSION

15. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission